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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL  
AND THE EUROPEAN PARLIAMENT

**FOLLOW-UP TO THE CONSULTATION PROCESS RELATING TO THE  
GREEN PAPER ON "PLURALISM AND MEDIA CONCENTRATION  
IN THE INTERNAL MARKET - AN ASSESSMENT OF THE NEED  
FOR COMMUNITY ACTION"**

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## RESUMÉ

1. At the request of the European Parliament and some of the interests concerned, in January 1993 the Commission asked all interested parties to participate in a wide-ranging consultation process on the basis of the Green Paper on "Pluralism and media concentration in the Internal Market - an assessment of the need for Community action". Now, more than a year later, the time has come to engage in a preliminary stock-taking exercise. This is happening at a turning point in the history of the media sector in Europe and will contribute towards implementation of the Commission's policy of promoting the information society, for which the associated imperatives were set out in the White Paper on Growth, competitiveness and employment. In this respect the present communication is an initial response to the report by the High Level Group ("Bangemann Group") set up by the European Council to put forward proposals on the information society. That report highlights among other things the detrimental effects on the Internal Market of the disparities between national rules on media ownership.
2. The purpose of the consultations on the Green Paper was to provide the Commission with the information it needs if it is to adopt a position on the sensitive issue of the need for Community rules on media ownership. The Green Paper had identified a number of obstacles to the proper functioning of the Internal Market caused by disparities between national rules on ownership of the media (television, radio and the press). The purpose of these national rules is to maintain pluralism by limiting access to media ownership by a single person, in particular by preventing cumulative control of, or holdings in, several media companies at once. The Green Paper showed that these disparities bring with them the risk of restrictions on the free movement of media services between Member States and on the freedom of establishment of media companies, considerable legal uncertainty, and restrictions - or distortions of competition. It concluded by proposing three options, although the Commission did not express any preference for any one of them at that stage. Option I consists in taking no action at Union level; Option II is a recommendation aimed at facilitating the exchange of information between Member States in the interests of transparency of media ownership; and Option III consists in harmonizing national restrictions on media ownership.
3. During the consultation process, which lasted over a year, opinions were received from the European Parliament and the Economic and Social Committee, both of which came out in favour of Option III. The Member States were consulted and they stressed the lack of any difficulties which might have justified Option II.

4. The consultations afforded the opportunity above all of gathering comments from the interests concerned, including both individual operators and the associations representing them at European level. The consultations developed a momentum of their own: the rate at which people made contact or sent in written comments remained steady and positions evolved over time. The replies to a complementary questionnaire sent out last summer revealed a change in the attitude of the interests concerned. Opinions may still be divided, but a majority of operators are now against the status quo (Option I) and in favour of a change in the existing regulatory framework governing media ownership. Positions are, on the other hand, even more divergent or less explicit on the question of the level (European or national) at which such a change should occur.

5. This general situation seems to be due to a number of factors:

Among the obstacles to the Internal Market identified in the Green Paper, the consultations revealed, more particularly, that the lack of legal certainty stemming from the current regulatory patchwork was a disincentive to investing in European media. This limits the opportunities for media companies to make the most of the growth potential of the Internal Market, and hence to play a more active part in promoting pluralism.

The new political and economic environment of the "information society", the importance of which was stressed in the Commission's White Paper on Growth, competitiveness and employment, has added a further dimension to the drawbacks caused by the lack, at Union level, of a common set of rules on media ownership. Globalization of the media industry and the new information technologies require that maximum use be made of the freedoms of the Internal Market in order to facilitate the transformation of this sector into a European industry which is both competitive and modern and which can perform to the full its essential role in the working of our democracies. This is why the introduction of a regulatory framework geared to the information society is one of the priority objectives of the White Paper, and why the High Level Group's report stresses the importance of a European approach to ending the patchwork of national rules on media ownership.

In order to adapt to this new environment, national laws on media ownership will evolve, and indeed are already evolving, in some Member States. Globalization and the development of the new information technologies are revealing a number of shortcomings in national laws on media ownership and necessitate their amendment. The prospect of such national legislative activity, uncoordinated at Union level, is likely to accentuate the damaging effects on the Internal Market of the disparities between national rules, foremost among which is fragmentation of the market.

6. Now that the European media industry is at a watershed, and in view of the importance which the Commission, like Parliament, attaches to the maintenance of pluralism, a Community initiative on media ownership might prove to be necessary. If this were to be the case, such an initiative should enable the internal media market to function, and in particular should facilitate the exercise of freedom of establishment for media companies and the free movement of media services in the Union, and at the same time maintain pluralism in the face of certain concentrations. It would provide both a maximum of legal certainty for investments in the media sector and a safety net preventing concentrations which represent a threat to pluralism and which cannot be dealt with under conventional competition-law rules.
  
7. The Commission will launch a second round of consultation with all the parties concerned having the dual objective of:
  - . rejecting or confirming the need for a Community initiative;
  - . in the event that such an initiative would prove necessary, define its limits

## INTRODUCTION

At the request of the European Parliament<sup>1</sup> and some of the interests concerned, in January 1993 the Commission launched a wide-ranging consultation process on the basis of the Green Paper on "Pluralism and media concentration in the Internal Market - an assessment of the need for Community action"<sup>2</sup>.

By adopting the Green Paper, the Commission sought, at the same time as providing a basis for discussion, to stress the importance which it attaches to preserving pluralism in the frontier-free area which is the Internal Market. The freedoms of the Internal Market cannot be put into practice at the expense of pluralism; on the contrary, their implementation helps to strengthen that market through the opportunities which it gives both citizens and the media.

The purpose of the Green Paper was to assess the need for action at Community level in the light of the disparities between national rules on media ownership. Since the middle of the 1980s all the Member States have introduced rules on media ownership. The purpose of these is to limit operators' freedom in order to and preserve pluralism. Four types of provision can be distinguished:

- Limits on monomedia concentration. These prevent the same person (natural or legal) from controlling or having an interest in several media of the same type at once, e.g. a ban on having more than "x" television stations or more than "x%" of the capital of a second station, if the operator already controls a TV station;
- Limits on multimedia concentration. These prevent a single person from controlling (or having an interest in) several media of different types, e.g. a newspaper company cannot control a television station, or a television station cannot control a radio station;
- Limits on shareholdings in a radio or television company which apply irrespective of *how many other media* are controlled, e.g. in some Member States it is impossible, even for a person who does not own any other media, to hold more than 25% of a television station;
- Limits concerning "disqualified persons". These prohibit certain types of operator or body from holding a radio or television licence or authorization, e.g. some Member States lay down that public bodies, local authorities, religious or political organizations and advertising agencies are "disqualified persons".

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<sup>1</sup> Resolution of 15 February 1990 on media takeovers and mergers, OJ No C 68, 19.3.90, pp. 137-8. Resolution of 16 September 1992 on media concentration and diversity of opinions, OJ No C 284, 2.11.92, p. 44.  
<sup>2</sup> COM(92)480 final, 23 December 1992.

Having emphasized that these rules vary widely between Member States (see Annex 7) and having analysed the impact of this diversity on the Community, the Green Paper summed up the analysis of the question of the need for action as follows:<sup>3</sup>

*"In the light of the objectives of the Community and of the analysis carried out here the need for possible Community action can be described as follows:*

- 1. The objective of ensuring pluralism, as it is understood and pursued by the Member States, does not as such create a need for Community intervention. The operation of the Community is not in itself a threat to pluralism; quite the reverse, it may have a positive effect on two factors which determine the level of pluralism: the number of broadcasters and newspapers and the diversity of their controllers. Member States have the legal capacity to safeguard pluralism, particularly where there is real circumvention. The only possible sources of difficulty are tension between national authorities regarding the definition of circumvention and questions regarding the transparency of media ownership and control.*
- 2. Among the methods used by Member States to safeguard pluralism, the disparity between the anti-concentration rules specific to the media constitutes an obstacle to the functioning of the single media market:  
it may result in restriction of the free movement of services where there is circumvention  
it may result in restrictions on freedom of establishment  
it may produce restrictions on competition  
it may distort competition  
it may cause legal uncertainty regarding the question of circumvention  
it limits access to media activity.  
Any need for action on the part of the Community, then, has more to do with ensuring that the Internal Market functions properly than with maintaining pluralism as such.*
- 3. For the present the obstacles are for the most part potential obstacles, because the relevant laws are recent and the strategies adopted by operators are often still national.*
- 4. Potential obstacles can be seen mainly in broadcasting, and particularly television broadcasting, which has the highest measure of regulation. The press is affected essentially by multimedia ownership rules rather than monomedia rules.*
- 5. The restrictions on media ownership which underlie the obstacles identified are not incompatible with Community law."*

The Green Paper concluded by proposing three options, without the Commission expressing a preference for any one of them at that stage. Option I consists in taking no action at Union level; Option II is a recommendation aimed at facilitating the exchange



of information between Member States to promote transparency of media ownership; and Option III consists in harmonizing national restrictions on media ownership.

Both the method and the scale of the consultations were justified in view of the importance the Commission attaches to the question of maintaining pluralism in the media and the complex and sensitive nature of the issue. Equally, in the context of the implementation of the principle of subsidiarity, a thorough approach was required to allow the need for action and the added value of action at Union level to be accurately identified.

The specific consultations on the Green Paper have been enriched by the work and the report of the High Level Group of prominent persons representing the interests concerned ("Bangemann Group"), set up by the European Council to put forward proposals on the "information society". The rapid changes in the technological and economic environment of all the media sectors inevitably throw up new topics for discussion during the consultations. It is generally accepted that digital technology is capable of transforming all media sectors by changing the economics of communication, the patterns of interdependence between sectors and the relations between the supplier of the service and the consumer.

The results of the consultation process and consideration of the principle of subsidiarity, notably the reality of obstacles to the freedoms of the Internal Market and the new dangers of fragmentation of the Internal Market created by the new rules currently being decided separately in several Member States, lead the Commission to the conclusion that an initiative at Community level might prove to be necessary. The Commission believes that it is therefore advisable to continue the consultation process. This should, in addition to enriching the information already gathered by the Commission, permit the latter to reject or confirm the need for an initiative and, in the latter case, allow it to have at its disposal all the key factors essential for the determination of its content. This content should be balanced and address the fundamental challenges to society posed by the safeguarding of media pluralism.

In the interests of transparency and in view of the wealth of information gathered in the course of the consultation process, the Commission wished to submit in this communication an interim report informing Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of the analysis it has made of the first round of consultation and of the follow-up it proposes.

## **I. THE CONSULTATION PROCESS**

In launching the consultations, the Commission had in mind not just a formal consultation of interested parties but to launch a genuine process with an in-built momentum featuring a frank and open dialogue with operators. This process has led to the creation of a kind of network of persons and operators interested in the question of pluralism and media ownership.

**A. Consultation method**

**1. EUROPEAN PARLIAMENT, ECONOMIC AND SOCIAL COMMITTEE AND MEMBER STATES**

As soon as it was adopted, the Green Paper was transmitted to Parliament and the Council. The Commission also asked the Economic and Social Committee to deliver an opinion on it. The consultations took place above all with the business circles concerned, the aim being to assess the impact on the Internal Market of the disparities between national rules on media ownership. Over and above the transmission of the Green Paper to the Council and the Member States' participation in the hearing attended by the interested business circles, the Commission wished to deepen the consultation with the Member States through a questionnaire on the transparency of media ownership. Only the national authorities were capable of furnishing the Commission with information on obstacles to the exchange of information between Member States relating to media ownership.

The Green Paper formed the subject-matter of an exchange of views at a ministerial seminar in Mons on 5 October 1993, in the course of which the Ministers for Cultural Affairs underscored the need to raise awareness among national business circles about the consultations under way.

**2. INTERESTS CONCERNED**

A *twin-track consultation process* was used, consisting of consulting on the one hand the federations and associations representing industry interests at European level, and on the other individual operators and all other interested parties. This twin-track approach made it possible to obtain both the common positions of European associations and federations and individual factual contributions on the specific problems encountered by the interests concerned.

A *hearing* attended by European associations and federations was held on 26 and 27 April 1993 (list of participants attached). Only European organizations were invited owing to space constraints but the positions of other interested parties were in any event taken fully into account.

A *complementary questionnaire* was sent to all interested parties on 28 July 1993 following receipt of the preliminary reactions to, and comments on, the Green Paper. The purpose of this questionnaire was to obtain more information on four specific points: the impact of the new technologies, the potential development of national rules, the real-audience criterion and the control criterion.

In addition, *numerous contacts and informal bilateral meetings* took place between the relevant Commission department and the interests concerned. Participation in conferences and symposia helped increase the latter group's awareness of the need to take part in the consultations.

*In the interests of transparency*, the written contributions received were gathered together, except where the originator withheld permission, in five volumes which were distributed among those who so requested. These can be obtained by sending a written request to the following address:

European Commission, DG XV/E-5, C 107 8/59, 200 rue de la Loi, B-1049 Brussels;  
fax: 32-2-296 17 36.

**B. Assessment of the consultations**

**1. QUANTITATIVE ASSESSMENT**

*Numbers.* Altogether, more than 70 sets of written comments on the Green Paper and the complementary questionnaire were received by the Commission. Of these, 25 emanated from European federations or associations and the remainder came either from individual operators or from national federations or private individuals.

*Geographical origin.* Among the comments from interested parties other than European industry federations, those originating in the United Kingdom, Germany and Italy were the most numerous. Some positions were received from the Netherlands, France and Greece. No contributions were received from operators in other Member States.

*Origin by sector.* About twenty written contributions emanated more particularly from the television sector, while some fifteen positions came from the press, six from the radio sector, eight from multimedia operators, and five from journalists' federations and employees in the media sector.

**2. QUALITATIVE ASSESSMENT**

**(a) Momentum of the consultations**

The Commission was at pains to ensure that the consultations built up and maintained a momentum, which meant doing more than just waiting for written comments to come in. In the event, the regular contacts between the department concerned and interested parties and the dispatch of a complementary questionnaire helped create a dynamic which worked well. The complementary questionnaire thus made it possible to gather positions from operators who had not yet submitted comments on the Green Paper as well as from those who had. There were more new participants in the consultation process than participants who had ceased to play the consultation game.

**(b) Representativeness of the positions**

With regard to the European industry federations, it is difficult to determine precisely whether the positions accurately reflect the views of all the operators involved. However, with regard to individual operators, the Commission notes with regret that the bulk of the positions come from just three Member States, namely Germany, Italy and the

United Kingdom. Operators from the other Member States were disinclined to submit formal contributions, despite the fact that some of them had established formal contact with the Commission's departments.

**(c) Quality of the information**

The contributions from parties other than European associations or federations provided a large number of specific and useful items of information. The positions of the European associations and federations are more a reflection of compromises which sometimes contain ambiguities or inconsistencies inherent in a collective decision-making process. The radio associations played an active part in the consultations and provided an insight into a modern and dynamic medium.

It is important to note that many of the European federations' positions were presented at the spring '93 hearing in a provisional form and that, in most cases, these positions have been neither confirmed nor called into question by definitive positions. The associations and federations have preferred instead to reply subsequently to the complementary questionnaire and to modify their positions through these replies without formally confirming their initial comments or otherwise.

Lastly, the low participation rate among consumer associations is to be regretted in view of the essential role they have to play in this sphere.

**II. ANALYSIS OF THE CONSULTATIONS**

The results of the consultations cannot be presented in a simplified and schematic form owing to the many nuances, hesitations or distinctions which characterise the contributions and positions of the interests concerned. Moreover, a number of misapprehensions need to be cleared up by the Commission.

**A. Outline of positions**

**1. PARLIAMENT, THE ECONOMIC AND SOCIAL COMMITTEE AND THE MEMBER STATES**

**(a) Parliament**

Parliament adopted an opinion on the Green Paper on 20 January 1994.<sup>4</sup> It comes out in favour of **Option III subsection c** ( creation of an independent committee). It accordingly calls on the Commission to draw up a proposal for a directive "firstly harmonizing

<sup>4</sup>

OJ C 44, 14.2.1994, p. 177.

national restrictions on media concentration and secondly enabling the Community to intervene in the event of concentration which endangers pluralism on a European scale" (§ 1). It asks that an independent committee, or "European Media Council", be set up. It provides some details as to the content of the proposal for such a directive, and calls on the Commission to propose a directive on access to information held by national and Community authorities and a directive safeguarding the independence of information, and to put forward proposals concerning a European media code of conduct to maintain professional ethics.

**(b) The Economic and Social Committee**

The ESC adopted an opinion on the Green Paper on 22 September 1993.<sup>5</sup> It came out in favour of **Option III**. Like Parliament, it calls for the drafting of a proposal for a directive and considers sub-option C (establishment of an independent committee) to be "both reasonable and effective" (§ 4.7).

**(c) The Member States**

The specific questionnaire sent to the Member States in July 1993 has shown that **there is no need that justifies Option II** because at the present time there are no real difficulties in exchanging information relating to the transparency of media ownership. As regards the choice between Options I and III, Member States took a waiting position, not wanting, so it seems, to take up a position at this stage before knowing the results of the consultations with the interests concerned. One Member State wished to state its position on the options in the Green Paper in writing.

**2. THE INTERESTS CONCERNED**

Generally speaking the industry's position can be stated as follows: **the current national rules on media ownership must change, in particular so as to cope with globalization and the impact of the new technologies. On the other hand, the question of the level - national or European - at which the change must occur is the subject of vague or divided positions.** This is due to the fact that those in the industry hesitate to take a position on this question without knowing the exact content of the rules. Some of them had the impression that the Commission was asking them to sign a "blank cheque". This position emerged recently when the complementary questionnaire was being answered.

In view of the complexity of the posed questions, the diversity of the interests concerned and subtle variations between the comments, it is not possible to distinguish between and regroup the various positions according to the names of the originators. Dividing

<sup>5</sup>

OJ C 304, 10.11.1993, p. 17.

lines have, however, shown up clearly according to the type of operator concerned. Five dividing lines are clearly visible in the industry, depending on the operators concerned:

**(a) According to the scope of the operators' strategy: European strategy/national strategy**

Those operators who have a strategy of establishment (acquisition of holdings in, or control of, media companies) in the different Member States are the first to be interested in a common rule of the game in the Community which is both fixed and stable and which offers the legal essential to investment in this sector, where the risks and cost of access are already particularly high. On the other hand, those operators who have a strategy of establishment in their national market are less interested in a common rule except if they are adversely affected by distortions of competition (see below).

**(b) According to the operators' activities: monomedia press activities/multimedia activities**

Some operators who have a monomedia press strategy can see no point in Community action in so far as they are not victims of the disparities between laws on media ownership. Only France and Italy have specific rules limiting monomedia concentration by means of "mechanical" thresholds. Because such rules do not exist in the other Member States, the effects of the disparities are less important than in the case of multimedia activities or monomedia broadcasting concentration. By contrast, multimedia operators (or monomedia TV and radio operators) are more favourably disposed towards Community intervention because they may come up against the effects of the disparities between the rules that have been introduced in all Member States.

**(c) According to the operators' origin: open market/closed market**

Operators carrying on activities in a country where the rules on ownership are liberal are sometimes worried that investors might concentrate on their market rather than go to other countries where access to ownership is less liberal. The best-known example, which predates the Green Paper, is that of the British television company ITV, which voiced these fears in view of the fact that in the United Kingdom a single operator may have 100% of the capital of an ITV station whereas in other Member States holdings are limited to a maximum of 25% (as in Greece or Spain) or to less than 50% (as in Germany and, since recently, in France).

**(d) According to the operators' experience: new entrants/established operators**

New entrants have an obvious interest compared with established operators. The latter have had to find their feet in a recently enacted national regulatory environment and are therefore sometimes unfavourably disposed towards any action which might destabilise it. By contrast, new entrants who wish to invest in the media sector with an industrial

